

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:11CR7
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
GUILLERMO OLMEDO-MENDOZA,)	
)	
Defendant.)	

The Court has received the Revised Modified Presentence Investigation Report (“PSR”) in this case. The parties have not objected to the PSR. See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant moves for a downward departure based on overstatement of criminal history. The pleading was erroneously filed as objections to the PSR; however, the Defendant has no objections to the PSR. (Filing No. 26.) However, after describing the government's fast track downward departure, the plea agreement states "[t]he defendant will not seek downward departure from the sentencing guideline range . . . for any other reason, nor will the defendant seek or suggest a sentence reduction via variance or deviation for [sic] the Guidelines." (Filing No. 25, ¶ V(C).) Therefore, the Defendant's motion is denied.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant's motion for downward departure (Filing No. 26) is denied.

DATED this 27th day of June, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge